STATE OF MICHIGAN

COURT OF APPEALS

BARBARA LARIE,

Plaintiff-Appellant,

v

FERRIS STATE UNIVERSITY BOARD OF TRUSTEES and FERRIS STATE UNIVERSITY,

Defendants-Appellees.

UNPUBLISHED
January 24, 2003

No. 230918
Mecosta Circuit Court
LC No. 98-012539-AZ

BARBARA LARIE,

Plaintiff,

and

JAMES K. FETT,

Appellant,

v

FERRIS STATE UNIVERSITY BOARD OF TRUSTEES and FERRIS STATE UNIVERSITY,

Defendants-Appellees.

No. 231507
Mecosta Circuit Court
LC No. 98-012539-AZ

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff, Barbara Larie, appeals as of right the trial court's order awarding defendants, Ferris State University Board of Trustees and Ferris State University, $133,812.98 in attorney fees and costs as sanctions for filing a frivolous action. The order imposes joint and several

liability for the costs and attorney fees on plaintiff, plaintiff's former attorney, and her current attorney, James K. Fett. Fett appeals the same order in Docket No. 231507.[1] We affirm.

I. Facts and Procedural History

In December 1997, defendants demoted plaintiff from her position as a secretary in the Ferris State University Social Sciences Department. On February 17, 1998, plaintiff, through her first attorney, Arthur Przybylowicz, filed a complaint and alleged that defendants retaliated against her in violation of the Civil Rights Act (CRA). Specifically, plaintiff asserted that she participated or assisted in an investigation under MCL 37.2701 and opposed a violation of the CRA by talking to an investigator, Dean Garrison, about a reverse discrimination lawsuit initiated against the university by a part-time Ferris State instructor, William Topping. According to her complaint, after plaintiff talked to Garrison, defendants subjected her to suspension, demotion, vigorous and threatening interrogation, and orders to divulge personal, privileged communications.

Following her deposition, Przybylowicz sought to withdraw as plaintiff's counsel. Thereafter, the trial court granted defendants' motion for summary disposition on April 12, 1999. Defendants filed a motion for sanctions against plaintiff and her attorneys and argued that plaintiff's lawsuit is frivolous because she filed her complaint to embarrass or injure defendants, plaintiff and Przybylowicz had no reasonable basis to believe the facts in the complaint were true, and the claims are devoid of arguable legal merit. Defendants further argued that plaintiff and her attorneys "engaged in post-complaint maintenance of the frivolous litigation by engaging in deceptive, dishonest and repeatedly contradictory testimony, and refusal to produce documents, manifesting her ongoing unwillingness to afford the litigation process the respect and integrity it deserves . . . ."

Following several hearings, the trial court entered an order granting defendants' motion for sanctions against plaintiff and her attorneys on October 30, 2000. The trial court ruled that plaintiff and her attorneys are jointly and severally liable for $127,769.60 in attorney fees and $6,043.38 in costs totaling $133,812.98. However, because Przybylowicz ceased representing plaintiff after November 3, 1998, the trial court capped Przybylowicz's sanctions at $70,968.46.[2]

II. Analysis

A. Standards of Review and Applicable Law

Plaintiff and Fett argue that the trial court erred by ruling that plaintiff's lawsuit is frivolous. We disagree.

In her complaint, plaintiff alleged that defendants violated her civil rights under MCL 37.2701, which provides that a person shall not:

[1] Fett also appeals as of right. This Court consolidated these cases on January 5, 2001.

[2] Przybylowicz also appealed the trial court's order, but he settled with defendants and filed a stipulation to dismiss the appeal at oral argument. This Court entered an order dismissing Przybylowicz' appeal on December 17, 2002.

> (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

As this Court explained in *DeFlaviis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1996):

> To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action.

Further, "[t]o establish causation, the plaintiff must show that his participation in an activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001).

This Court reviews a trial court's "award of sanctions based on a frivolous complaint under a clearly erroneous standard." *Lakeside Oakland Development, LC v H & J Beef Co*, 249 Mich App 517, 532; 644 NW2d 765 (2002). Defendants moved for sanctions under MCR 2.625(A)(2), MCL 600.2591, and MCR 2.114. MCR 2.114 permits the imposition of sanctions on a party or attorney if a signed pleading is not well-grounded in fact and law. MCR 2.625(A)(2) and MCL 600.2591 allow the prevailing party to recover costs and fees in connection with a frivolous case. Under MCL 600.2591(3)(a), a case is frivolous if:

> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

While a trial court may impose sanctions if only one of the conditions is met under MCL 600.2591(3)(a), here, the trial court ruled that plaintiff's claim is frivolous under all three sections. We are not left with a definite and firm conviction that the trial court made a mistake in reaching this conclusion. Accordingly, the trial court did not clearly err by imposing sanctions against plaintiffs and her attorneys for filing and maintaining a frivolous lawsuit.

B. Imposition of Sanctions

As noted, in her complaint, plaintiff alleged that defendants retaliated against her because she assisted or participated in Topping's reverse discrimination case under the CRA. Plaintiff asserted that this retaliation began after she spoke to Garrison in January 1997. Specifically, plaintiff alleged that defendants' representatives "vigorously interrogated her" and "made comments which Plaintiff understood to be a threat to her employment." Plaintiff further

asserted that defendants continued their retaliation by demanding that she reveal personal and privileged information. Finally, plaintiff alleged that defendants retaliated against her in December 1997 by demoting her to a lower, less-responsible position in the university library.

As a preliminary matter, we note that plaintiff's meeting with Garrison is arguably an activity protected by the CRA as "participation" or "assistance" in a civil rights claim. MCL 37.2701(a). Also, plaintiff's submission of two affidavits in support of Topping's reverse discrimination case would appear to fall under the protection of the CRA. *Id*. However, plaintiff's assertions regarding defendants' "vigorous" and "threatening" interviews and defendants' demand that she produce documents are not "adverse employment actions" under the CRA because they do not constitute a "materially adverse change in the terms and conditions of employment." *Meyer v City of Center Line*, 242 Mich App 560, 570; 619 NW2d 182 (2000), quoting *Richardson v New York State Dep't of Correctional Service*, 180 F 3d 426, 446 (CA 2, 1999). Accordingly, to state a prima facie claim, plaintiff had to show that her assistance in Topping's lawsuit was a "significant factor" in her demotion.

Ample evidence in the record reveals that defendants did not demote plaintiff because she met with Garrison and that plaintiff had no basis to reasonably believe that defendants demoted her because she met with Garrison. Further, the record reflects that plaintiff and her attorneys knew that the allegations in plaintiff's complaint regarding real or perceived threats to her employment were false. MCL 600.2591(3)(a)(ii). Moreover, plaintiff made inconsistent, false and misleading statements to defendants' agents and obstructed defendants' reasonable attempts to investigate serious allegations made and precipitated by plaintiff. Based on these facts, plaintiff and her attorneys also knew that plaintiff's claim of retaliation regarding these events was devoid of arguable legal merit. MCL 600.2591(3)(a)(iii).

The facts show that (1) defendants did not threaten plaintiff's employment, and (2) plaintiff had no reasonable basis to believe, *and in fact did not believe*, that defendants threatened her employment because she talked to Garrison. Before she filed her complaint, plaintiff also knew that (1) her misrepresentations regarding alleged "threats" and "interrogations" prompted Topping to file criminal charges and resulted in *more* meetings with defendants, and (2) her failure to cooperate with her employer by discussing Garrison's conduct and her reluctance to disclose cassette tapes relating to her allegations against defendants' representatives obstructed defendants' investigation and resulted in *more* meetings with defendants. And finally, before she filed her complaint, plaintiff also knew that, even based on the misrepresentations in her letter to the Michigan Department of Civil Rights (MDCR), plaintiff had no viable retaliation claim for defendants' investigation of these issues.

The record also reflects that plaintiff had no reasonable basis to believe the following facts asserted in her complaint: (1) that defendants continued to retaliate against plaintiff by "interrogating" her in the Fall of 1997, or (2) that defendants demoted plaintiff because she assisted in a civil rights lawsuit. MCL 600.2591(3)(a)(ii). Rather, the evidence shows that plaintiff and her attorneys knew that defendants demoted plaintiff because (1) she made false statements to and about the university, (2) she secretly copied and disseminated internal university documents in derogation of the duties and responsibilities of her employment, and (3) she repeatedly obstructed defendants' investigation regarding these issues. Moreover, because the evidence clearly shows that defendants demoted plaintiff for those reasons, plaintiff's legal position is devoid of arguable legal merit. MCL 600.2591(3)(a)(iii).

For the above reasons, plaintiff had no legitimate factual or legal basis to assert in her complaint that defendants demoted plaintiff in retaliation for her participation in Topping's civil rights claim. While, admittedly, Topping's lawsuit is inextricably linked with plaintiff's allegations, the record clearly shows that plaintiff was demoted not because she assisted Topping by talking to Garrison or submitting two affidavits, but because, while in a position of trust, she repeatedly made misrepresentations, removed and copied documents, and obstructed the university's reasonable inquiries regarding her conduct. When Fett took over as plaintiff's counsel, he had already participated and advised plaintiff about these employment issues. Fett also knew that plaintiff testified in detail regarding the above infractions. Notwithstanding this knowledge, Fett signed pleadings and maintained this action.

The trial court did not clearly err by finding that plaintiff and Fett filed and maintained a frivolous lawsuit under MCR 2.625(A)(2), MCL 600.2591, and that they signed pleadings in violation of MCR 2.114. The record also reflects that plaintiff has repeatedly falsified or mischaracterized the university's actions by filing or encouraging the filing of criminal and agency charges in addition to her claim in this case. Accordingly, the trial court did not clearly err by concluding that plaintiff's primary purpose in filing this action was to further harass, embarrass or injure defendants.

C. Amount of Attorney Fees and Costs

We find no merit in plaintiff's or Fett's claim that the trial court abused its discretion by awarding defendants $133,812.98 in attorney fees and costs as sanctions. *In re Costs and Attorney Fees*, 250 Mich App 89, 104, 645 NW2d 697 (2002).

Fett argues that the trial court erred by imposing joint and several attorney fees and costs. While he does not assert that the imposition of joint and several liability for sanctions is legally incorrect, he argues that, factually, he should not be jointly responsible for the sanctions. As discussed, both Fett and Przybylowicz knew or should have known that the factual assertions in plaintiff's complaint were false and that plaintiff's claim lacked legal and factual merit throughout the litigation. Notwithstanding this knowledge, Fett signed pleadings, filed motions and otherwise caused defendants to incur costs and fees.

Moreover, Fett acted as plaintiff's attorney in January and February 1997 and clearly encouraged plaintiff to file this frivolous claim and other charges with the MDCR. Furthermore, as defendants correctly note, at the summary disposition hearing in March 1999, Fett specifically told the trial court that plaintiff has been his client, without interruption, since January 1997. Fett will not be heard to argue a contradictory position when he made this admission on the record. As defendants further note, Fett falsely claims that his involvement began in 1999 when he defended the motion for summary disposition. This assertion is clearly belied by the fact that Fett signed and filed numerous motions and affidavits and appeared for hearings in the months before the summary disposition hearing. Therefore, Fett's claim that he should not be held jointly responsible for these sanctions is untenable and he has no basis to claim that "equity and fairness" require this Court to reduce his liability.[3]

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[3] While Marcia Linderman has not filed a claim on appeal, Fett argues that Linderman should not
(continued…)

We further hold that the trial court's award of attorney fees was reasonable. See *Wood v Detroit Auto Inter-Insurance Exchange*, 413 Mich 573, 588; 321 NW2d 653 (1982). Not only did defense counsel submit a detailed list of her fees and costs and actual billing records, defense counsel presented ample, detailed evidence to justify her fees at a lengthy evidentiary hearing. The record clearly supports the trial court's award of fees and costs and the trial court clearly did not abuse its discretion in awarding $133,812.98.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski

(…continued)

be responsible for sanctions in this case because she is a limited partner in Fett and Linderman and she did not participate extensively in this case. We note that, while Linderman clearly did not participate in this case to the same degree as Fett, the trial court did not abuse its discretion in also holding her liable for the attorney fees. Linderman signed motions and correspondence in this case and, as noted by defendants, she also arguably participated in the "inconsistencies and deceptions" in this case. Accordingly, the trial court did not abuse its discretion.